

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GENNARO A. CUOMO, BINH Q. NGUYEN,
RICHARD J. REDPATH, and SANDEEP KISHAN SINGHAL

Appeal No. 2000-2009
Application No. 08/832,430

ON BRIEF

Before HAIRSTON, KRASS, and BLANKENSHIP, Administrative Patent Judges.

BLANKENSHIP, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 1-4, 8-13, 17-22, 26, and 27, which are all the claims remaining in the application.

We reverse.

BACKGROUND

The invention is directed to a method and system for providing an interface which allows a computer server to connect multiple users to a multi-user game.

Representative claim 1 is reproduced below.

1. A method of providing a network interface in a data processing system to connect multiple users for a multi-user game, comprising the steps of:

using a LobbySession object to encapsulate access to a Lobby Server;

using said LobbySession object to retrieve a list of available games registered with the Lobby Server; and

using said LobbySession object to return a common GameSession object in response to both a user requesting to register a game with the LobbySession, or requesting to join a registered game.

The examiner relies on the following reference:

Grimm et al. (Grimm)	5,828,843	Oct. 27, 1998 (filed Mar. 20, 1997)
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Claims 1-4, 8-13, 17-22, 26, and 27 stand rejected under 35 U.S.C. § 102 as being anticipated by Grimm.

We refer to the Final Rejection (Paper No. 7) and the Examiner's Answer (Paper No. 14) for a statement of the examiner's position and to the Brief (Paper No. 13) and the Reply Brief (Paper No. 15) for appellants' position with respect to the claims which stand rejected.

OPINION

Although we agree with appellants to the extent that a prima facie case of anticipation has not been established on this record, we disagree with any implication (e.g., Reply Brief at 8) that Grimm fails to anticipate the claims because the reference does not describe features as “object oriented programming object[s].” For a prior art reference to anticipate in terms of 35 U.S.C. § 102, every element of the claimed invention must be identically shown in a single reference, but this is not an “ipsissimis verbis” test. In re Bond, 910 F.2d 831, 832, 15 USPQ2d 1566, 1567 (Fed. Cir. 1990). Thus, whether a reference anticipates a claim is not dependent on terminology alone.

However, we note that the claims before us contain terms of art. During patent prosecution, the USPTO is to apply to claims the broadest reasonable meaning of the words, consistent with their ordinary usage as they would be understood by one of ordinary skill in the art. In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997).

Newton's Telecom Dictionary (2001 ed.)¹ defines an “object” in the context of object-oriented programming as “a variable comprising both routines and data that is treated as a discrete entity.” “An object is based on a specific model, where a client using an object’s services gains access to the object’s data through an interface consisting of a set of methods or related functions. The client can then call these

¹ Although not a reference, we consider it unlikely that the art-recognized definitions have changed in substance since filing of appellants’ application.

methods to perform operations.” Id. The above-noted technical dictionary also defines encapsulation, in reference to object-oriented programming, as the grouping of data and the code that manipulates it into a single entity or object. Encapsulation refers to the hiding of most of the details of the object, and both attributes (data structure) and the methods (procedures) are hidden.

Apparently, the examiner has not interpreted the instant claims with due regard to the artisan’s understanding of the terms. For example, the statement of the rejection (Answer at 3) appears to equate the claimed “LobbySession object” with a “message” that is sent in the procedural programming system of Grimm. However, in view of the artisan’s understanding of an “object,” a simple message (i.e., data) transferred in a system falls short of the claim term. The rejection also suggests (id.) that a general, or informal, definition of “encapsulate” has been attributed to the instant claims -- i.e., interpreting “encapsulated” as meaning simply “contained within.”

We also agree with appellants that the rejection is unclear with respect to which features of the reference are deemed to correspond to the various claim terms. For example, the rejection seems to equate the “LobbySession object” with a “message” (Answer at 3), with a “game offer record” (id. at 4), and with a “client” (id. at 6).² Moreover, based on our understanding of the technical definition of “object,” the artisan

² The “game offer record” might also be deemed a GameSession object; e.g., Answer at 7.

would not have considered any one of a “message,” a “record,” or a “client” to be an “object.”

In any event, since Grimm does not describe the allegedly anticipatory system in express terms of object-oriented programming, to anticipate a claim the reference must disclose an embodiment that inherently meets all the features of the claim. However, our reviewing court has set out clear standards for establishing inherency. To establish inherency, the extrinsic evidence “must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill.” In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (citations omitted).

The one who bears the initial burden of presenting a prima facie case of unpatentability is the examiner. In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). In the instant case, we conclude that the examiner has not established that Grimm meets all the terms of any of the independent claims 1, 10, and 19.

Whether the subject matter of any of the claims before us could be shown as having been obvious (35 U.S.C. § 103) in view of the evidence provided by Grimm, combined with evidence of the ordinary artisan’s knowledge with respect to the tools of object-oriented programming, is not at issue in the instant appeal. On this record we conclude that the examiner’s finding of anticipation is based on erroneous claim

Appeal No. 2000-2009
Application No. 08/832,430

interpretation. We thus cannot sustain the rejection of claims 1-4, 8-13, 17-22, 26, and 27 under 35 U.S.C. § 102 as being anticipated by Grimm.

CONCLUSION

The rejection of claims 1-4, 8-13, 17-22, 26, and 27 under 35 U.S.C. § 102 is reversed.

REVERSED

KENNETH W. HAIRSTON
Administrative Patent Judge

ERROL A. KRASS
Administrative Patent Judge

HOWARD B. BLANKENSHIP
Administrative Patent Judge

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Appeal No. 2000-2009
Application No. 08/832,430

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